IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR.

O R D E R

Sri Ram Sharma. Versus State of Rajasthan.

S.B. Criminal Misc. Petition No.950/2006
against the order dated 28-7-2005 passed
by the Additional Sessions Judge, Sojat,
district Pali, in Criminal Revision No.12/2005.

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Date of Order: November 28, 2006

PRESENT

HON'BLE MR. JUSTICE H.R. PANWAR

None present for the petitioner.
Mr. Ashok Upadhyaya, Public Prosecutor for the State.

BY THE COURT:

When the matter was called in the first round, Ms. Yogita Mohanani, Advocate,appeared and submitted that the matter will be argued by the petitioner himself. At the request, the matter was passed-over. In the second round, neither the petitioner himself, nor his counsel appeared.

Heard learned Public Prosecutor appearing for the State. Carefully gone through the memo of the criminal miscellaneous petition filed by the petitioner under Section 482 of the Code of Criminal Procedure, 1973 (for short, "the Code" hereinafter) challenging the order dated 28-7-2005 passed by the Additional Sessions Judge, Sojat, district Pali (for short, "the

Revisional Court" hereinafter) in Criminal Revision No.12/2005, whereby the revision petition filed by the petitioner against the order dated 5-3-2005 passed by the Judicial Magistrate, Desuri, district Pali (for short, "the trial Court" hereinafter) was dismissed.

The facts and circumstances giving rise to the instant petition are that the petitioner is a complainant in a criminal case for the offences under Sections 143, 448 and 504 IPC. Initially the report was lodged by the complainant-petitioner for the offences under Sections 147, 148,450 and 380 IPC. However, after investigation, the investigating officer filed the Challan against the accused for the offences under Sections 143, 448 and 504 IPC. The complainant-petitioner filed an application under Section 94 of the Code seeking a direction of the trial Court to search the place suspecting to contain the stolen property. The trial Court, vide order dated 5-3-2005, dismissed the application for issuing a search warrant. That order came to be challenged by the petitioner-complainant before the Revisional Court and the Revisional Court did not find any error in the order of the trial Court and consequently dismissed the revision.

I have carefully gone through the orders passed by both the Courts below.

Section 94 of the Code provides that if a District

Magistrate, Sub-Divisional Magistrate or Magistrate of the first class, upon information and after such inquiry as he thinks necessary, has reason to believe that any place is used for the deposit or sale of stolen property, or for the deposit, sale or production of any objectionable article to which this section applies, or that any such objectionable article is deposited in any place, he may by a warrant authorize any police officer above the rank of a constable (a) to enter, with such assistance as may be required, such place, (b) to search the same in the manner specified in the warrant, (c) to take possession of any property or article therein found which he reasonably suspects to be stolen property or objectionable article to which the section applies.

In the instant case, after a thorough investigation, the police did not find a case of theft and the trial Court did not think it proper to issue any search warrant at the request of the complainant-petitioner. The trial Court, finding no ground to issue search warrant, dismissed the application filed by the complainant-petitioner. It appears from the order of the trial Court that in some civil matter, a direction to maintain status quo with regard to the property, of which the search warrant was sought to be issued, has been passed. The trial Court finding that issuance of search warrant and allowing the investigating officer to search the premises, would amount to violation of the

order of the civil court directing to maintain status quo.

Be that as it may, even otherwise, in my view, the trial Court was justified in declining to issue a search warrant. There is no ground warranting issuance of a search warrant. The Revisional Court, considering the matter in right perspective, by a well-reasoned and elaborate order, found no error in the order of the trial Court. Thus, both the Courts below concurrently found that no case for issuing a search warrant is made out. In my view, it cannot be said that the impugned orders would result in serious miscarriage of justice or abuse of process of the Court warranting interference in inherent jurisdiction.

The criminal miscellaneous petition is, therefore, dismissed.

(H.R. PANWAR), J.

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